

REMARKS

The invention provides for synergistic herbicidal combinations comprising specific hydroxylphenylpyruvate dioxygenase inhibitors in combination with at least one second herbicide belonging to one of four classes of herbicides.

Pursuant to 37 C.F.R. 1.136(a), Applicants petition the Assistant Commissioner to extend the time period to file a response by three (3) months, i.e., up to and including February 5, 2004. A check for \$950 is enclosed to cover the cost of the petition. It is believed that no further fee is required. If, however, an additional fee is due, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, to Deposit Account 50-0320.

Claims 1-16, 18 and 19 are pending. This Amendment cancels claims 1-16 and 19 without prejudice or the intention of creating an estoppel. This Amendment further adds new claims 1-6 wherein the definition of Q is limited to Q¹, Q² and Q³, definition of X is limited to X¹ and definition of compound of group B) is limited to group B-a), B-b), B-c) and B-d), and claims 25 and 26 which read upon species which synergistic herbicidal activity had been shown in Declaration by Dr. Bieringer (previously presented with the response filed on May 19, 2003). Support for the new claims 1-6, 25 and 26 can be found in cancelled claims 1-16 and throughout the specification. No new matter had been added.

Claims 1-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kamano et al. U.S.5,801,121 ("Kamano"), Shibata et al. E.P. 0768033 ("Shibata"), Graber et al. WO 97/34486 ("Graber"), Luff et al. U.S.6,230,070 ("Luff"), Anderson-Taylor et al. WO 97/22253 ("Anderson-Taylor"), Takashima et al. EP 0810227 ("Takashima") or Scher et al. U.S.5,912,207 ("Scher"). As none of these references teaches or suggests unexpected synergistic results obtained when combining Q-CO-X type of hydroxylphenylpyruvate dioxygenase

inhibitor with secondary herbicidal agents, Applicants urge that the rejection does not establish a *prima facie* case of obviousness. Moreover, even if it were held that the rejection establishes a *prima facie* case of obviousness, it is urged that the Declaration of Dr. Bieringer overcomes such a finding.

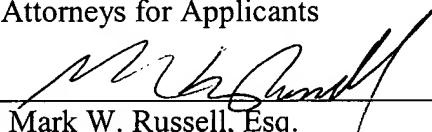
In order to advance prosecution of this application, Applicants amended the scope of the claimed subject matter so that it is more commensurate in scope with the data presented in the Declaration by Dr. Bieringer. Further, Applicants urge that rejection under 35 U.S.C 103(a) over Kamano, (which allegedly suggests the herbicidal activity of $Q^1\text{-CO-X}^2$), Takashima, (which allegedly suggests the combination of $Q^3\text{-CO-X}^2$) and Scher, (which allegedly suggests the combination of ($Q^5\text{-CO-X}^1$)) is now moot in view of the amendments to the claims. Applicants have made these changes without prejudice and reserve the right to file a divisional application with claims directed to the cancelled subject matter.

The rejection further relies upon teachings of Graber (for allegedly suggesting the combination $Q^3\text{-CO-X}^1$ in combination with secondary herbicides), Luff (for allegedly suggesting the combination $Q^3\text{-CO-X}^1$ in combination with sulfonylurea) and Anderson-Taylor (for allegedly suggesting the combination $Q^3\text{-CO-X}^1$ in combination with bromoxynil or ioxynil) to establish a *prima facie* case of obviousness. Applicants respectfully disagree and point out that previously presented Declaration of Dr. Bieringer provides unexpected results for unelected species of type $Q^2\text{-CO-X}^1$. Because the $Q^2\text{-CO-X}^1$ and $Q^3\text{-CO-X}^1$ share the same group X, and because Q^2 and Q^3 are both heterocyclic nitrogen-containing rings, it can be extrapolated from the data of the Declaration of Dr. Bieringer that $Q^3\text{-CO-X}^1$ and $Q^2\text{-CO-X}^2$ exhibit similar synergistic herbicidal activities. Thus, Applicants urge that any finding of obviousness has been successfully rebutted.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested. Favorable action is earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By 
Mark W. Russell, Esq.
Registration No. 32,517
745 Fifth Avenue
New York, New York 10151
(212) 588-0800